

AMENDED IN SENATE JUNE 11, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 804

Introduced by Assembly Member Huff

February 22, 2007

An act to amend Sections 17210.2 and 17346 of, 17346, 17406, and 17600 of, and to add Sections 17421.5 and 17425 to, the Financial Code, and to amend Section 11121.1 of the Government Code, relating to escrow agents.

LEGISLATIVE COUNSEL'S DIGEST

AB 804, as amended, Huff. Escrow agents.

Existing law, the Escrow Law, provides for the licensure and regulation of escrow agents by the Commissioner of Corporations.

~~Existing~~

(1) *Existing law* requires a licensed escrow agent, in referring to corporate licensure under the Escrow Law in any communication, as specified, to include a statement that the escrow company holds an escrow license issued by the Department of Corporations.

This bill would modify that statement to refer to the California Department of Corporations.

~~Existing~~

(2) *Existing law* establishes the Escrow Agents' Fidelity Corporation (Fidelity Corporation) to indemnify its member escrow agents against loss, as specified. Existing law prohibits the Fidelity Corporation and its members from advertising, printing, displaying, publishing, distributing, or broadcasting any statement or representation with regard to a guarantee of trust obligations that is false or misleading or calculated to deceive or misinform the public.

~~Existing law requires the commissioner, unless otherwise specified, to review and approve any statement or representation with regard to a guarantee of trust obligations prior to its use.~~

~~This bill would authorize members to use the seal of the Fidelity Corporation in any advertising referring to the Fidelity Corporation without prior approval of the commissioner.~~

~~Existing~~

~~(3) Existing law requires that advertising referring to the Fidelity Corporation to include a statement to the effect that the Escrow Agents' Fidelity Corporation is a private corporation and is not an agency or other instrumentality of the State of California.~~

~~The~~

~~This bill would modify that statement.~~

~~(4) Existing law makes it unlawful for any person to enter into any arrangement permitting any fee, commission, or compensation which is contingent upon the performance of any act, condition, or instruction set forth in an escrow to be drawn or paid, as specified, prior to the actual closing and completion of the escrow. However, existing law authorizes a disbursal, other than for a fee, commission, or compensation to be advanced or paid out prior to the close of an escrow if that arrangement is specified in the written instructions of all parties to the transaction.~~

~~This bill would authorize a licensee to charge a fee for administering an escrow that has been postponed for at least 2 months from the most recent closing date agreed upon by the parties in the written instructions or has been canceled if certain requirements are met.~~

~~(5) Existing law makes it unlawful for any person subject to this law or any director, stockholder, trustee, officer, agent, or employee of that person to, among other things, knowingly or recklessly disburse or cause the disbursal of escrow funds otherwise than in accordance with escrow instructions.~~

~~This bill would specify that any person subject to this law or any director, stockholder, trustee, officer, agent, or employee of that person who violates any provision of the federal Real Estate Settlement Procedures Act violates this law.~~

~~(6) Under existing law, an escrow agent's license remains in effect until surrendered, revoked, or suspended. Existing law provides that surrender of a license becomes effective 30 days after receipt of an application to surrender that license or within a shorter period of time as determined by the commissioner.~~

This bill would delete that provision and instead require a licensee who no longer desires to be licensed to provide written notification to the commissioner and to also tender the license, as specified, to the commissioner. The bill would require the licensee, within 105 days of the written notice, to submit to the commissioner a specified closing audit report. The bill would specify that a license is not surrendered until the commissioner has reviewed and accepted the closing audit report, a determination has been made by the commissioner that there is no violation of this law, and tender of the license is accepted in writing by the commissioner.

(7) The Bagley-Keene Open Meeting Act requires, with specified exceptions, that all meetings of a state body be open and public and all persons be permitted to attend any meeting of a state body.

This bill would specify that the Escrow Law Advisory Committee is not a state body.

The bill would make various technical, nonsubstantive changes.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17210.2 of the Financial Code is amended
2 to read:
3 17210.2. (a) No escrow agent shall disseminate, or cause or
4 permit to be disseminated, in any manner whatsoever, any
5 statement or representation which is false, misleading, or deceptive,
6 or which omits to state material information, or which refers to
7 the supervision of that agent by the State of California or any
8 department or official thereof.
9 (b) A licensed escrow agent, in referring to the corporation's
10 licensure under this law in any written or printed communication
11 or any communication by means of recorded telephone messages
12 or spoken on radio, television, or similar communications media,
13 shall include the following statement: "This escrow company holds
14 California Department of Corporations Escrow License No. ____."
15 (c) The commissioner may order any person to desist from any
16 conduct which the commissioner finds to be a violation of this
17 section.
18 SEC. 2. Section 17346 of the Financial Code is amended to
19 read:

1 17346. (a) Fidelity Corporation and its members shall not
2 advertise, print, display, publish, distribute, or broadcast, or cause
3 or permit to be advertised, printed, displayed, published,
4 distributed, or broadcast, in any manner any statement or
5 representation with regard to a guarantee of trust obligations in
6 their advertisements that is false or misleading or calculated to
7 deceive or misinform the public. Any statement or representation
8 with regard to a guarantee of trust obligations, except the statement
9 set forth in subdivision (b) and the seal in subdivision (d), shall be
10 reviewed and approved by the commissioner prior to its use.

11 (b) Any advertising referring to Fidelity Corporation shall state
12 in a clear and conspicuous manner, the following statement:

13 “MEMBER OF ESCROW AGENTS’ FIDELITY
14 CORPORATION (EAFC), THAT PROVIDES FIDELITY
15 BONDING COVERAGE TO ITS MEMBERS. EAFC IS NOT
16 AN AGENCY OF THE STATE OF CALIFORNIA.”

17 (c) Neither Fidelity Corporation nor its members shall advertise
18 that trust obligations of escrow agents are “protected,”
19 “guaranteed,” “insured,” or use words to that effect.

20 ~~(d) Members may use the seal of Fidelity Corporation in any~~
21 ~~advertising referring to Fidelity Corporation pursuant to subdivision~~
22 ~~(b).~~

23 *SEC. 3. Section 17406 of the Financial Code is amended to*
24 *read:*

25 17406. (a) Each licensee shall submit to the commissioner, at
26 ~~such~~ *the* licensee’s own expense, an audit report containing audited
27 financial statements covering the calendar year or, if ~~such~~ *the*
28 licensee has an established fiscal year, then for ~~such~~ *that* fiscal
29 year, within 105 days after the close of ~~each~~ *such* ~~the~~ calendar or
30 fiscal year, *as applicable*. At ~~such~~ *that* time, each licensee shall
31 also file ~~such~~ additional relevant information as the commissioner
32 may require.

33 (b) Within 30 days after receipt of a request from the
34 commissioner, a licensee or other person subject to this division
35 shall submit to the commissioner, at ~~such~~ *the* person’s own
36 expense, an audit report containing audited financial statements
37 covering the 12 calendar months next preceding the month of
38 receipt of the request, or ~~such~~ *other* ~~for another~~ period as the
39 commissioner may require. Unless the public interest shall
40 otherwise require, the commissioner shall exempt a licensee from

1 the provisions of subdivision (a) ~~hereof~~ in whole or in part if ~~such~~
2 ~~the~~ licensee has complied with a request pursuant to this
3 subdivision as of a date within the calendar or fiscal year for which
4 ~~such the~~ exemption is granted.

5 (c) A licensee whose license has been ~~surrendered or~~ revoked
6 shall submit to the commissioner, at its own expense, on or before
7 105 days after the effective date of ~~such surrender or the~~ revocation,
8 a closing audit report as of ~~such that~~ effective date, or for ~~such~~
9 ~~other another~~ period as the commissioner may specify. ~~Such The~~
10 report shall include the information specified by the commissioner.
11 A licensee who has complied with this subdivision is ~~exempted~~
12 ~~exempt~~ from subdivision (a) of this section.

13 (d) The reports and financial statements referred to in
14 subdivisions ~~(a), (b), and (c) of this section~~ (a) and (b) shall include
15 at least a balance sheet and a statement of income for the year
16 ended on the balance sheet date together with ~~such~~ other relevant
17 information as the commissioner may require, ~~and. The reports~~
18 ~~and financial statements referred to in subdivisions (a), (b), and~~
19 (c) shall be prepared in accordance with generally accepted
20 accounting principles, and shall be accompanied by a report,
21 certificate, or opinion of, an independent certified public accountant
22 or independent public accountant. The audits shall be conducted
23 in accordance with generally accepted auditing standards and the
24 rules of the commissioner.

25 (e) A licensee shall make other special reports to the
26 commissioner as the commissioner may from time to time require.

27 (f) For good cause and upon written request, the commissioner
28 may extend the time for compliance with subdivisions (a) and (b)
29 ~~of this section.~~

30 (g) A licensee shall, when requested by the commissioner,
31 submit its unaudited financial statements, prepared in accordance
32 with generally accepted accounting principles and consisting of
33 at least a balance sheet and statement of income and expense as
34 of the date and for the period specified by the commissioner. The
35 commissioner may require the submission of ~~such these~~ reports
36 on a monthly or other periodic basis.

37 (h) If the report, certificate, or opinion of the independent
38 accountant referred to in subdivision (d) ~~hereof~~ is in any way
39 qualified, the commissioner may require the licensee to take ~~such~~
40 action as he *or she* deems appropriate to permit an independent

1 accountant to remove ~~such~~ the qualifications from the report,
2 certificate, or opinion.

3 (i) The commissioner may reject any financial statement, report,
4 certificate, or opinion by notifying the licensee or other person
5 required to make ~~such~~ the filing of its rejection and the cause
6 ~~thereof of the rejection~~. Within 30 days after the receipt of ~~such~~
7 the notice, the licensee or other person shall correct ~~such~~ the
8 deficiency and the failure so to do shall be deemed a violation of
9 this division. The commissioner shall retain a copy of all *rejected*
10 filings ~~so rejected~~.

11 (j) The commissioner may make rules specifying the form and
12 content of the reports and financial statements referred to in this
13 section, and may require that ~~such~~ those reports and financial
14 statements be verified by the licensee in ~~such~~ th manner as he *or*
15 she may prescribe.

16 (k) Upon completion of the reports and financial statements
17 referred to in subdivisions (a), (b), and (c), the independent
18 accountant shall submit to the commissioner complete copies of
19 the reports and financial statements at the same time that copies
20 of the reports and financial statements are submitted to the licensee.

21 *SEC. 4. Section 17421.5 is added to the Financial Code, to*
22 *read:*

23 *17421.5. (a) Notwithstanding Section 17420, a licensee may*
24 *charge a fee for administering an escrow that has been postponed*
25 *for at least two months from the most recent closing date agreed*
26 *upon by the parties in the written instructions or has been canceled*
27 *if both of the following requirements are met:*

28 *(1) The postponement or cancellation resulted from the acts or*
29 *omissions of the parties to the escrow transaction.*

30 *(2) The fee was disclosed in the written instructions and agreed*
31 *upon by all of the parties to the escrow transaction.*

32 *(b) This section shall apply to written instructions made on and*
33 *after January 1, 2008.*

34 *SEC. 5. Section 17425 is added to the Financial Code, to read:*

35 *17425. Any person subject to this division or any director,*
36 *stockholder, trustee, officer, agent, or employee of that person*
37 *who violates any provision of the federal Real Estate Settlement*
38 *Procedures Act, as amended (12 U.S.C.A. Sec. 2601 et seq.), or*
39 *any regulation promulgated thereunder, violates this division.*

1 *SEC. 6. Section 17600 of the Financial Code is amended to*
2 *read:*

3 17600. (a) An escrow agent's license remains in effect until
4 surrendered, revoked, or suspended.

5 (b) ~~Surrender of a license becomes effective 30 days after receipt~~
6 ~~of an application to surrender such license or within such shorter~~
7 ~~period of time as the commissioner may determine, unless a~~
8 ~~revocation or suspension proceeding is pending when the~~
9 ~~application is filed or a proceeding to revoke or suspend or to~~
10 ~~impose conditions upon the surrender is instituted within 30 days~~
11 ~~after the application is filed. If such a proceeding is pending or~~
12 ~~instituted, surrender of a license becomes effective at such time~~
13 ~~and upon such conditions as the commissioner determines. A~~
14 ~~licensee that ceases to engage in the business regulated by this~~
15 ~~division and desires to no longer be licensed shall notify the~~
16 ~~commissioner in writing and, at that time, tender the license and~~
17 ~~all other indicia of licensure to the commissioner. Within 105 days~~
18 ~~of the written notice to the commissioner, the licensee shall submit~~
19 ~~to the commissioner, at its own expense, a closing audit report as~~
20 ~~of the date the license is tendered to the commissioner for~~
21 ~~surrender, or for another period as the commissioner may specify,~~
22 ~~to be performed by an independent certified public accountant.~~
23 ~~The closing audit shall include, but not be limited to, information~~
24 ~~required by the commissioner, a bank reconciliation of the trust~~
25 ~~account, and a verified statement from a certified public accountant~~
26 ~~confirming lawful disbursement of funds. A license is not~~
27 ~~surrendered until the commissioner has reviewed and accepted~~
28 ~~the closing audit report, a determination has been made by the~~
29 ~~commissioner that there is no violation of this law, and tender of~~
30 ~~the license is accepted in writing by the commissioner.~~

31 *SEC. 7. Section 11121.1 of the Government Code is amended*
32 *to read:*

33 11121.1. As used in this article, "state body" does not include
34 any of the following:

35 (a) State agencies provided for in Article VI of the California
36 Constitution.

37 (b) Districts or other local agencies whose meetings are required
38 to be open to the public pursuant to the Ralph M. Brown Act
39 (Chapter 9 (commencing with Section 54950) of Part 1 of Division
40 2 of Title 5).

1 (c) State agencies provided for in Article IV of the California
2 Constitution whose meetings are required to be open to the public
3 pursuant to the Grunsky-Burton Open Meeting Act (Article 2.2
4 (commencing with Section 9027) of Chapter 1.5 of Part 1 of
5 Division 2 of Title 2).

6 (d) State agencies when they are conducting proceedings
7 pursuant to Section 3596.

8 (e) State agencies provided for in Section 109260 of the Health
9 and Safety Code, except as provided in Section 109390 of the
10 Health and Safety Code.

11 (f) State agencies provided for in Section 11770.5 of the
12 Insurance Code.

13 (g) The Credit Union Advisory Committee established pursuant
14 to Section 14380 of the Financial Code.

15 (h) *The Escrow Law Advisory Committee established pursuant*
16 *to Section 17214 of the Financial Code.*